

HOUSE No. 1678

By Mr. Festa of Melrose, petition of Michael E. Festa relative to the restructuring of retail electricity services. Telecommunications, Utilities and Energy.

The Commonwealth of Massachusetts

In the Year Two Thousand and Five.

AN ACT RELATIVE TO THE PROVISION OF RETAIL ELECTRICITY SERVICES.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 1 of Chapter 164 of the General Laws, is
2 hereby amended by striking the definitions “default service,” “dis-
3 tribution,” “distribution service,” “electric company,” “electric
4 service,” “generation service,” “supplier,” and “unbundled rates”
5 and by inserting the following definitions:
6 “Basic electric service,” the bundled retail electric service that
7 shall be offered for the period from March 1, 2005 through
8 December 31, 2007 to those customers on standard offer or
9 default service as of February 28, 2005.
10 “Default Service”, the electricity services provided to a retail
11 customer upon either the (i) failure of a distribution company or
12 retail service provider to provide such electricity services as
13 required by law or as contracted for under the standard service
14 offer, (ii) the completion of the term of the standard service offer,
15 or (iii) upon the inability of a customer to receive standard service
16 transition rates during the term of the standard service offer pur-
17 suant to section 1B. Default service shall be offered through but
18 not after 11:59 p.m. on February 28, 2005.
19 “Distribution,” the delivery of electricity over lines which
20 operate at a voltage level typically equal to or greater than 110
21 volts and less than 69,000 volts to an end-use customer within the
22 commonwealth, on behalf of a retail service provider serving such
23 customer. The distribution of electricity shall be subject to the
24 jurisdiction of the department.

25 “Distribution service”, the delivery of electricity to the cus-
26 tomer by the electric distribution company, on behalf of the cus-
27 tomer’s retail service provider, from points on the transmission
28 system or from a generating plant, at distribution voltage. Distrib-
29 ution service shall also include metering, meter reading, meter
30 maintenance and testing, and similar services found by the depart-
31 ment to be an inherent and essential element of the distribution of
32 electricity and not appropriately provided through the competitive
33 market.

34 “Electric company”, a corporation organized under the laws of
35 the commonwealth for the purpose of making by means of water
36 power, steam power or otherwise and selling, or distributing and
37 selling, or only distributing, electricity within the commonwealth,
38 or authorized by special act so to do, even though subsequently
39 authorized to make or sell gas; provided, however, that electric
40 company shall not mean a retail service provider or an alternative
41 energy producer; and provided further, that a distribution com-
42 pany shall not include any entity which owns or operates a plant
43 or equipment used to produce electricity, steam, and chilled water,
44 or any affiliate engaged solely in the provision of such electricity,
45 steam, and chilled water, where the electricity produced by such
46 entity or its affiliate is primarily for the benefit of hospitals and
47 non-profit educational institutions, and where such plant or equip-
48 ment was in operation prior to January 1, 1986.

49 “Electric service”, the provision of retail, generation, transmis-
50 sion, distribution, or ancillary services.

51 “Generation service”, the provision of commodity generation
52 and related services to a customer.

53 “Non-generation retail services,” those aspects of retail service
54 other than procuring and providing generation service.

55 “Retail service”, the provision to one or more retail customers
56 of end-use services other than distribution service. As of
57 March 1, 2005, retail service shall include, but need not be limited
58 to, initiating and procuring generation and distribution service,
59 retail billing, call center facilities for customer inquiries; and a
60 pass-through of the price reduction for low income customers pro-
61 vided for in section 1F(4).

62 “Supplier” “Retail Service Provider”, any supplier provider of
63 generation retail service to retail customers or, as provided in

64 section 1, to other retail service providers including power mar-
65 keters, brokers, and marketing affiliates of distribution companies,
66 except that no electric company shall be considered a supplier
67 retail service provider. A retail service provider shall not own,
68 operate, or control any transmission or distribution facilities. A
69 retail service provider shall not be considered an electric company
70 for purposes of this or any other chapter.

71 “Supplier of Last Resort”, the retail service provider designated
72 by the department, pursuant to section 1BB, to provide retail
73 service to a retail customer in the event that (i) such customer’s
74 affirmatively-chosen retail service provider fails or refuses to pro-
75 vide such service, or (ii) such customer fails to choose a retail
76 service provider as required by section 1AA(f).

77 “Unbundled rates”, rates designed to separate the costs of pro-
78 viding generation, the costs of providing retail service, the costs
79 of transmission and distribution services, and transition and
80 general access charges.

1 SECTION 2. Said Chapter 164 is hereby further amended by
2 inserting after Section 1A the following section:

3 AA(a). On or before January 1, 2005, each distribution com-
4 pany shall file with the department a detailed plan for restruc-
5 turing its operations such that all retail services currently provided
6 by the distribution company, including, without limitation, billing,
7 call centers, and related customer care services, shall be trans-
8 ferred to a retail service provider formed by and affiliated with the
9 distribution company, as well as all rights, liabilities, and costs
10 related to the provision of such retail services, and all rights, lia-
11 bilities, and costs related to the provision of standard-offer and
12 default service. As an element of its filing, each such distribution
13 company shall propose new tariffed rates for distribution service
14 consistent with the provisions of subsection (c), and shall also
15 show that it has created a system of cost-accounting and records,
16 consistent with the requirements of the Federal Energy Regulatory
17 Commission, in order to ensure that the costs associated with the
18 provision of distribution service and the provision of retail serv-
19 ices are accurately and separately identified. Each distribution
20 company’s affiliated retail service provider shall also propose tar-
21 iffed rates for the provision of non-generation retail services on a

22 wholesale basis to non-utility-affiliated retail service providers
23 consistent with the provisions of subsection (d).

24 1AA(b). The department shall review each plan and make an
25 express finding as to whether such plan complies with the provi-
26 sions. Each plan shall be designed to implement such restruc-
27 turing of the distribution company's operations by March 1, 2005
28 and shall include all information and materials required by the
29 department, pursuant to section 1F(1), for the licensing of the
30 aforementioned affiliated retail service provider formed or to be
31 formed by a distribution company. The department shall review
32 the restructuring plan filed by each distribution company and shall
33 issue an order accepting, modifying, or rejecting such plan within
34 six months of its being filed. If the department rejects such a
35 plan, it shall state the specific reasons for rejection and direct the
36 distribution company to file an alternative plan addressing these
37 objections within 30 days of the department's order rejecting the
38 plan. The department shall review this alternative plan and issue
39 a final order within 60 days of the filing thereof.

40 1AA(c). As an element of any department order accepting or
41 modifying a distribution company's restructuring plan, the depart-
42 ment shall approve new tariffed rates for distribution service,
43 which rates shall exclude all rights, liabilities, and costs related to
44 the provision of retail service, standard offer service, and default
45 service. On and after March 1, 2005, distribution service shall be
46 provided by the distribution company to retail service providers
47 on a tariffed, non-discriminatory basis in accordance with rules
48 and regulations to be developed by the department. In addition,
49 all services such as metering, meter reading, meter maintenance
50 and testing, and similar services shall continue to be performed by
51 the distribution company with respect to all customers within its
52 service territory, and the information obtained thereby shall be
53 provided by the distribution company to the applicable retail
54 service provider providing service to each such customer or the
55 retail service provider's designee, in accordance with rules and
56 regulations to be developed by the department.

57 1AA(d). As an element of any department order accepting or
58 modifying a distribution company's restructuring plan, the depart-
59 ment shall approve new tariffed rates and terms and conditions for
60 the provision of non-generation retail services, including, without

61 limitation, billing, call centers, and related customer care services,
62 by a utility-affiliated retail service provider to non-utility-affili-
63 ated retail service providers. Utility-affiliated retail service
64 providers must offer such non-generation retail services to non-
65 utility-affiliated retail service providers for the period com-
66 mencing March 1, 2005 and ending February 28, 2006, although a
67 utility-affiliated retail service provider may continue to offer such
68 non-generation retail services thereafter for resale on an unregu-
69 lated basis.

70 1AA(e). On or after March 1, 2005, a distribution company
71 shall not offer generation or retail services. All responsibility for
72 the safe and reliable operation of the distribution system shall
73 remain with the distribution company. Accordingly, each retail
74 service provider shall, at its option, either (i) immediately forward
75 to the distribution company in the service territory of which a cus-
76 tomer is located any telephone call received from the customer
77 concerning any issue involving the safety or reliability of the cus-
78 tomer's electric service; or (ii) immediately furnish electronically
79 to such distribution company all relevant information received
80 from such customer concerning such issue.

81 1AA(f). The department shall promulgate rules and regulations
82 on or before January 1, 2005 requiring uniformity in the electronic
83 data interchange used by and among retail service providers and
84 electric companies to facilitate the transfer of data relating to cus-
85 tomer identification, service initiation, meter reading and usage
86 data, transmission and distribution charges, and special codes
87 (such as customer medical needs for electricity and eligibility for
88 price reductions for low income customers). Such rules should
89 ensure to the greatest extent possible that such electronic data
90 exchange is secure from unauthorized access and use.

91 1AA(g). From and after March 1, 2005, no retail service may
92 be provided to retail customers except by retail service providers
93 duly licensed in accordance with the provisions of section 1F(1).
94 From and after such date, any customer establishing new service,
95 and any other customer who is not receiving or who ceases to
96 receive retail service from a retail service provider shall receive
97 service of last resort pursuant to section 1BB until such customer
98 affirmatively selects a retail service provider from which to
99 receive retail service.

100 1AA(h). A retail service provider shall not be subject to regula-
101 tion as a public utility or as an electric company, and shall be sub-
102 ject to regulation only as specifically provided in this chapter.

1 SECTION 3. Subsection (b) of Section 1B of said Chapter 164
2 is hereby amended by striking the last two sentences and inserting
3 in place thereof the following:

4 The standard service transition rate shall be offered for a transi-
5 tion period of seven years at prices and on terms approved by the
6 department and shall require a distribution company to purchase
7 electricity after a competitive bid process that is reviewed and
8 approved by the department. Customers taking standard offer
9 service as of February 28, 2005 shall be served thereafter by basic
10 electric service through a retail service provider, as established in
11 subsection 1B(d). Any customer who has chosen retail access
12 from a non-affiliated generation company but who otherwise
13 requires electric service due to said generation company's failure
14 to provide contracted service shall be eligible for service through
15 the distribution company's default service provided pursuant to
16 the provisions of subsection (d) through and including
17 February 28, 2005 and, thereafter, from the supplier of last resort
18 as established in section 1BB. Customers taking default service
19 as of February 28, 2005 will be served thereafter by basic service
20 through a retail service provider, as established in subsection
21 1B(d).

1 SECTION 4. Subsection (d) of said Section 1B is hereby
2 amended by inserting at the end thereof the following:

3 1B(d)(i). Not later than January 1, 2005, the department shall
4 promulgate procedures and criteria pursuant to which all rights
5 and obligations with respect to providing retail service to standard
6 offer and default service customers shall be assumed as of
7 March 1, 2005 by certain retail service providers, as designated by
8 the department. Each such provider shall make available to such
9 customers a basic electric service package consisting of firm
10 service, call center facilities for customer inquiries, retail billing,
11 distribution service as procured on a tariffed basis from the distri-
12 bution company on each customer's behalf, and a pass-through of

13 the price reduction for low income customers provided for in
14 section 1F(4).

15 1B(d)(ii). For purposes of providing basic electric service, the
16 department shall require that customers be categorized into three
17 classes: residential, small non-residential, and large non-residen-
18 tial. The department shall designate one or more retail service
19 providers to provide basic electric service to all customers in the
20 residential and small non-residential customer classes in each dis-
21 tribution company's service territory; provided, however, that any
22 such customer who has already chosen a competitive supplier as
23 of February 1, 2005 shall continue to receive service from the cus-
24 tomer's chosen supplier. Large non-residential customers shall
25 not be eligible to receive basic electric service. Large non-
26 residential customers who have not chosen a competitive supplier
27 as of February 1, 2005 will be served by the supplier of last resort
28 beginning March 1, 2005, as described in section 1BB.

29 1B(d)(iii). The department shall designate the providers of
30 basic electric service by February 1, 2005. Selection by the
31 department of such providers, and the price at which basic electric
32 service will be provided, shall be determined through a competi-
33 tive bidding process. The design of the competitive bidding
34 process shall be determined by the department through a contested
35 case proceeding in compliance with chapter 30A. Such process
36 shall require that bids submitted by retail service providers set
37 forth the price at which basic electric service would be provided
38 through December 31, 2007, such price to be stated as the amount
39 to be charged in addition to the non-bypassable tariffed rates to be
40 charged for distribution services. Such bids shall be evaluated by
41 the department based upon the price bid, the financial strength of
42 the bidder, and the capability of the bidder to provide effective
43 and efficient retail electricity service as demonstrated either
44 within or outside of the commonwealth. In the event that no retail
45 service provider bids to provide such service for all or any geo-
46 graphic portion of any customer class of a distribution company's
47 standard offer and default service customers, the department shall
48 require that one or more retail service providers serve as the
49 provider therefor as a condition of it receiving or maintaining cer-
50 tification under section 1F(1), in which case the price at which
51 such retail service provider shall provide such service shall be

52 determined through negotiations between it and the department.
53 The designated providers shall commence basic electric service to
54 electric companies' former standard offer and default customers
55 as of March 1, 2005. Basic electric service shall expire as of
56 12:00 a.m., January 1, 2008.

57 1B(d)(iv). The prices at which a designated retail service
58 provider offers basic electric service shall be fixed for the period
59 between and including March 1, 2005 through February 28, 2006.
60 Thereafter, from March 1, 2006 through December 31, 2007, the
61 price for basic electric service may be adjusted no more than once
62 every six months upon application to the department by the
63 default service provider to reflect changes in the price of pur-
64 chased energy, as determined by market price fluctuation shown
65 after March 1, 2005 on an electricity commodity index specified
66 by the department; provided, however, that if no such index is
67 available, the department may in its discretion specify a substitute
68 published fuel index. Commencing January 1, 2008, retail service
69 providers shall provide retail service at unregulated, market-based
70 prices.

71 1B(d)(v). Nothing in this section shall preclude a designated
72 provider from offering to basic electric service customers, at addi-
73 tional unregulated prices, products and services in addition to the
74 aforementioned basic electric service package. Notwithstanding
75 the foregoing, an affiliated retail service provider that is providing
76 basic electric service to some or all of the residential and small
77 non-residential customers in its service territory may not offer
78 service of any kind to customers other than those acquired through
79 the auction process described in subsection 1B(d)(iii) until such
80 time as the number of residential and small non-residential cus-
81 tomers served by non-affiliated retail service providers exceeds
82 thirty-five percent of the total number of such residential and
83 small non-residential customers in the applicable service territory.

1 SECTION 5. Said Chapter 164 is hereby further amended by
2 inserting after Section 1B the following:

3 Section 1BB. Not later than January 1, 2005, the department
4 shall promulgate procedures and criteria pursuant to which certain
5 retail service providers, as designated by the department, will
6 serve as suppliers of last resort to retail customers.

7 (a) Not later than February 1, 2005, the department shall designate for each customer class in each distribution company's service territory retail service providers to serve as suppliers of last resort after March 1, 2005. A supplier of last resort shall make available to customers a basic service package consisting of firm service, call center facilities for customer inquiries, retail billing, and a pass-through of the price reduction for low income customers provided for in section 1F(4).

15 (b) For purposes of service by suppliers of last resort, the department shall require that customers be categorized into three classes: residential, small non-residential, and large non-residential. The department shall designate a supplier of last resort to serve customers as described in subsection 1BB(c) in each distribution company's service territory; provided, however, that no retail service provider that is affiliated with a distribution company shall be designated to provide supplier of last resort service to any residential and small non-residential customers located within such distribution company's service territory until such time as the number of residential and small non-residential customers served by non-affiliated retail service providers exceeds thirty-five percent of the total number of such residential and small non-residential customers in the applicable service territory.

29 (c) In the event that a retail service provider fails or refuses to serve a retail customer, the applicable designated supplier of last resort shall provide the aforementioned basic service package to such customer. The supplier of last resort may not require that a customer contract for a minimum term as a condition of service. The department may relieve a supplier of last resort from its obligations for good cause shown, and may redesignate suppliers of last resort according to a schedule it deems appropriate.

37 (d) Selection by the department of suppliers of last resort for residential and small non-residential customers, and the price at which each such provider will provide the aforementioned basic service package, shall be determined through a competitive bidding process. Such process shall require that bids submitted by retail service providers set forth the price at which service would be provided, such price to be stated as the amount to be charged in addition to the non-bypassable tariffed rates to be charged for distribution services. Such bids shall be evaluated by the department

46 based upon the service price bid, the financial strength of the
47 bidder, and the capability of the bidder to provide effective and
48 efficient retail electricity service as demonstrated either within or
49 outside of the commonwealth. In the event that no retail service
50 provider bids to be the supplier of last resort for all or any geo-
51 graphic portion of any customer class within the commonwealth,
52 the department shall require that one or more retail service
53 providers serve as the supplier of last resort therefor as a condi-
54 tion of it receiving or maintaining certification under section
55 1F(1), in which case the price at which such retail service
56 provider shall provide service of last resort shall be determined
57 through negotiations between it and the department.

58 (e) A supplier of last resort may adjust up to four times per
59 year the prices at which it offers the aforementioned basic service
60 package to reflect changes in the price of purchased energy, as
61 determined by market price fluctuation shown after March 1, 2005
62 on an electricity commodity index specified by the department;
63 provided, however, that if no such index is available, the depart-
64 ment may in its discretion specify a substitute published fuel
65 index; provided, further, that with respect to customers in the
66 large non-residential class, such price adjustment shall be made
67 monthly.

68 (f) The department shall designate a supplier of last resort for
69 large non-residential customers through a competitive bidding
70 process. The design of the competitive bidding process shall be
71 determined by the department through a contested case pro-
72 ceeding. The price for supplier of last resort service to large non-
73 residential customers shall reflect as closely as possible the hourly
74 price of electricity as determined by the New England power pool
75 or the independent system operator responsible for the New Eng-
76 land bulk power system and wholesale marketplace. Bids
77 received shall be evaluated by the department based upon the
78 financial strength of the bidder, the capability of the bidder to pro-
79 vide effective and efficient retail electricity service, as demon-
80 strated either within or outside of the commonwealth, and the
81 supplier's ability to accurately reflect the hourly price of elec-
82 tricity in the ISO New England wholesale electricity market in the
83 price for supplier of last resort service.

1 SECTION 6. Section 1D of said Chapter 164 is hereby
2 amended by inserting at the end thereof the following:

3 From and after March 1, 2005, the provisions of this section
4 shall no longer apply with respect to electric service. From and
5 after such date, all electricity bills to retail customers shall be ren-
6 dered by the retail service provider or its designee to such cus-
7 tomer, in accordance with the applicable rules and regulations
8 promulgated by the department.

1 SECTION 7. Section 1F of said Chapter 164 is hereby amended
2 by striking paragraphs (1), (1)(i), and (1)(iii) and inserting in
3 place thereof the following:

4 1F(1). The department shall license to do business in the com-
5 monwealth all retail service providers, generation companies,
6 aggregators, suppliers, energy marketers, and energy brokers in
7 accordance with the provisions of subparagraphs (i), (ii), and (iii).
8 The department shall maintain a list of all licensed retail service
9 providers, generation companies, aggregators, and energy brokers,
10 energy marketers, and suppliers, which shall be available to any
11 consumer requesting such information through the department for
12 a reasonable fee.

13 1F(1)(i). All generation companies shall submit a license appli-
14 cation to the department for approval to sell electric power or pro-
15 vide generation services within the commonwealth. Such
16 application shall include the following: a description of the com-
17 pany's technical ability, as defined pursuant to regulations pro-
18 mulgated by the department, to generate or otherwise obtain and
19 deliver electricity and provide any other proposed services; docu-
20 mentation of financial capability of the applicant to provide the
21 proposed services; a description of the company's form of owner-
22 ship; and documentation regarding any valid purchase power con-
23 tracts between the company, the company's affiliates, or the
24 company's parent or subsidiary, and any electric company formed
25 pursuant to the provisions of this chapter. As of March 1, 2005,
26 retail service shall only be provided by licensed retail service
27 providers. All retail service providers shall submit a license
28 application to the department for approval to provide retail service
29 within the commonwealth. In addition to the aforementioned
30 items, such an application shall include a description of the capa-

31 bility of the applicant to provide effective and efficient retail elec-
32 tricity service, as demonstrated either within or outside of the
33 commonwealth. The department shall promulgate regulations
34 establishing a financial assurance policy for retail service
35 providers whereby the department will assess the ability of each
36 retail service provider to pay for tariffed services provided by
37 electric companies to ensure the safety of funds collected from
38 customers for purposes of paying for such tariffed services. A
39 license shall not be granted unless and until all of the above infor-
40 mation is provided with the payment of a fee, the amount to be
41 determined by the department. Any entity licensed by the depart-
42 ment as a “generation company” or “supplier” as of January 1,
43 2005 shall submit to the department an application to become a
44 licensed retail service provider in compliance with this section.
45 1F(1)(iii). All energy brokers, energy marketers, and other sup-
46 pliers seeking to do business in the commonwealth shall submit a
47 license application to the department, subject to rules and regula-
48 tions promulgated by the department and subject to the payment
49 of a fee, the amount to be determined by the department.

1 SECTION 8. Said Section 1F of said Chapter 164 is hereby
2 further amended by striking out paragraph (5)(i) and inserting in
3 place thereof the following:

4 1F(5)(i). Before service is initiated by a retail service provider
5 generation company, aggregator, or supplier to any customer, the
6 retail service provider generation company, aggregator, or supplier
7 shall disclose information regarding essential contract terms to the
8 on rates and other information to a customer in a written or elec-
9 tronic statement which the customer may retain. The department
10 shall promulgate rules and regulations prescribing the form, con-
11 tent, and distribution of such information to be disclosed, which
12 shall include, but not be limited to, the following: the disclosure
13 of essential contract terms, including the price for each service
14 being provided and the term or the agreement; any charges, fees,
15 penalties, or other conditions imposed upon a customer should
16 such customer choose to purchase power from another retail
17 service provider during the term specified in the contract; limits,
18 if any, on warranty and damages; a toll-free telephone number;
19 and the disclosure of the rate to be charged; whether the sources

20 of generation procured by the retail service provider operate gen-
21 eration company or supplier operates under collective bargaining
22 agreements and whether such sources operate generation company
23 or supplier operates with employees hired as replacements during
24 the course of a labor dispute; any charges. Retail service
25 providers shall also make available to customers, upon request,
26 information regarding the fuel mix and emissions of the sources of
27 the generation sold by the retail service provider, where provider-
28 specific information is known, and information regarding the fuel
29 mix and emissions of system power in the New England power
30 pool control area, where provider-specific information is not
31 known, fees, penalties, or other conditions imposed upon a cus-
32 tomer should he or she choose to purchase power from another
33 generation company, aggregator, or supplier during the term speci-
34 fied in the contract; the fuel mix and emissions of the generation
35 sources; whether a credit agency will be contacted; deposit
36 requirements and the interest paid on deposits; due date of bills
37 and all consequences of late payment; consumer rights where a
38 bill is estimated; consumer rights of third-party billing and like
39 arrangements; consumer rights to deferred payment arrangements;
40 low-income rates; limits, if any, on warranty and damages; the
41 applicable provisions of this section; the provisions for default
42 service; a toll-free telephone number for service complaints; any
43 other fees, charges, or penalties; and the methods by which a con-
44 sumer shall be notified of any changes to any of these items. A
45 generation company, a supplier, or an aggregator licensed by the
46 department to do business in the commonwealth pursuant to this
47 section shall prepare an information booklet describing a cus-
48 tomer's rights under the provisions of this chapter. Such company,
49 supplier, or aggregator shall annually mail this booklet to its
50 customers.

1 SECTION 9. Said Section 1F of said Chapter 164 is hereby fur-
2 ther amended by striking paragraph (6) and inserting in place
3 thereof the following:

4 1F(6). The department shall promulgate uniform labeling regu-
5 lations which shall be applicable to all retail service providers
6 suppliers as a condition of licensure pursuant to paragraph
7 (1). Such information to be required by regulation in said labeling

8 shall include price data, information on price variability, and
9 essential contract terms, customer service information, and infor-
10 mation about whether the sources of generation procured by the
11 retail service provider operate generation company or supplier
12 operates under collective bargaining agreements and whether the
13 sources of generation procured by the retail service provider
14 operate such generation company or supplier operates with
15 employees hired as replacements during the course of a labor dis-
16 pute, fuel sources, and air emissions of sulfur dioxide, nitrogen
17 dioxides, carbon dioxide, heavy metals, and any other emission
18 which the department may determine causes significant health or
19 environmental impact and for which sufficiently accurate and reli-
20 able data is available. If such data are not reasonably available to
21 a retail service provider, the provider may substitute such repre-
22 sentative fuel source and emissions data as may be available from
23 the New England power pool or the independent system operator
24 responsible for the New England bulk power system and whole-
25 sale marketplace. The department shall require that such an elec-
51 tricity information label provide prospective and existing
52 customers with adequate information by which to readily evaluate
53 power supply options available in the market. Electricity sup-
54 pliers Retail service providers shall be required to present such
55 information, including information about the environmental char-
56 acteristics of the sale of electric power products and services and
57 whether the generation company or supplier operates entities from
58 which the retail service provider obtains the generation service it
59 provides to customers operate under collective bargaining agree-
60 ments and whether such generation company or supplier operates
61 entities operate with employees hired as replacements during the
62 course of a labor dispute to customers, in conformance with
63 department requirements as to form and substance, and shall
64 comply with federal and state laws governing unfair advertising
65 and labeling.

1 SECTION 10. Said Section 1F is hereby amended by striking
2 out paragraphs (8)(a)(i), (a)(ii), (a)(iv), (a)(v), (a)(vi)(B),
3 (a)(vi)(C), (a)(vi)(D), (a)(vii), (a)(ix), (c), (d), and (e) and
4 inserting in place thereof the following:

5 1F(8)(a)(i). Each customer choosing a retail service provider
6 generation company or its affiliate, subsidiary, or parent company,
7 or a supplier or aggregator shall be required to affirmatively
8 choose such entity. Except for last resort service, it shall be
9 unlawful for a retail service provider, generation company, sup-
10 plier or aggregator to provide power or other services to such a
11 customer without first obtaining said affirmative choice from the
12 customer.

13 1F(8)(a)(ii). For the purposes of this section, the term “affirma-
14 tive choice” shall mean the signing of a letter of authorization,
15 third party verification, the completion of a customer-initiated
16 telephone call made by a customer to a retail service provider, or
17 the completion of a toll-free call made by the customer to an inde-
18 pendent third party operating in a location physically separate
19 from the telemarketing representative who has obtained the cus-
20 tomer’s initial oral authorization to change to a new electricity
21 service provider.

22 1F(8)(a)(iv). For the purposes of this section, the term “letter of
23 authorization” shall mean a separate written or electronic docu-
24 ment, or an easily separable written or electronic document whose
25 sole purpose is to authorize a generation company, aggregator, or
26 supplier retail service provider to initiate a primary generation
27 company, aggregator, or supplier retail service provider change.
28 The letter of authorization must be signed and dated by the con-
29 sumer requesting the primary generation company, aggregator, or
30 supplier retail service provider change. An electronic signature
31 meeting the requirements of the Electronic Signatures in Global
32 and National Commerce Act, 15 U.S.C. §7001 et seq., shall be
33 considered a valid signature for purposes of this section.

34 1F(8)(a)(v). The letter of authorization shall not be combined
35 with inducements of any kind on the same document.

36 1F(8)(a)(vi)(v). [renumber provision].

37 1F(8)(a)(vi)(v)(B), the decision to change electricity service
38 from the current generation company, aggregator or supplier retail
39 service provider to the prospective generation company, aggre-
40 gator or supplier retail service provider; and

41 1F(8)(a)(vi)(v)(C), that the consumer understands that only one
42 generation company (if before March 1, 2005), aggregator or sup-

43 plier retail service provider may be designated as by the con-
44 sumer's competitive supplier; and.

45 1F(8)(a)(vi)(v)(D), that the consumer understands that any pri-
46 mary generation company, aggregator or supplier selection the
47 consumer chooses may involve a charge to the consumer for
48 changing the consumer's primary generation company, aggregator
49 or supplier.

50 1F(8)(a)(vii)(vi). Letters of authorization shall not suggest or
51 require that a consumer take some action in order to retain the
52 consumer's current retail service provider or generation company,
53 aggregator, or supplier.

54 1F(8)(a)(viii)(vii). [renumber provision].

55 1F(8)(a)(ix)(viii). Each customer choosing a generation com-
56 pany or its affiliate, subsidiary, or parent company, a supplier
57 retail service provider or aggregator shall have the right to
58 rescind, without charge or penalty, the choice of retail service
59 provider or generation company, aggregator, or supplier no later
60 than midnight on the third day following the customer's receipt of
61 a written confirmation of an agreement to purchase electricity and
62 a statement of the terms and conditions of service as described in
63 subparagraph (i) of paragraph (5). Upon switching of a customer's
64 service provider, there shall be included in the customer's next
65 monthly statement for distribution service an acknowledgment of
66 the service switch, along with information on how to file a com-
67 plaint regarding an unauthorized switch.

68 1F(8)(c). If the department determines that the new service
69 provider does not possess the required proof of the customer's
70 affirmative choice, the department shall calculate and require the
71 new service provider to refund the following: (i) to the customer,
72 the difference between what the customer would have paid to the
73 previous service provider and full amount of all actual charges
74 paid to the new service provider; (ii) to the customer, any reason-
75 able expense the customer incurred in switching back to the orig-
76 inal service provider; and (iii) to the original service provider, any
77 lost revenue, which shall consist of the amount of money the orig-
78 inal service provider would have received for the service used by
79 the customer during the time the customer received services from
80 the new service provider if the customer's service had not been
81 switched. This amount shall gross, irrespective of expenses, what

82 the original service provider would have reasonably incurred pro-
83 viding the services to the customer. The department shall promul-
84 gate rules and regulations for the implementation of this
85 subsection.

86 1F(8)(d). Any generation company, supplier retail service
87 provider, or aggregator determined by the department to have
88 switched any customer's service provider without proper autho-
89 rization from the customer one or more times in a 12 month
90 period shall be subject to a civil penalty not to exceed \$1,000 for
91 the first offense and not less than \$2,000 nor more than \$3,000 for
92 any subsequent offense per customer. In determining the amount
93 of the civil penalty, the department shall consider the nature, cir-
94 cumstances, and gravity of the violation, the degree of the respon-
95 dent's culpability, and the respondent's history of prior offenses.

96 1F(8)(e). Any generation company, supplier retail service
97 provider, or aggregator determined to have switched any cus-
98 tomer's service provider without proper authorization more than
99 20 times in a 12 month period may, after a full hearing and deter-
100 mination by the department that such generation company sup-
101 plier retail service provider or aggregator intentionally,
102 maliciously or fraudulently switched the service or more than
103 20 customers in a 12 month period, be prohibited from selling
104 electricity in the commonwealth for a period of up to one year,
105 have its license to sell electricity in the commonwealth suspended
106 or revoked. In determining the length of suspension, the depart-
107 ment shall consider the nature, circumstances and gravity of each
108 violation and the degree of the culpability of the generation com-
109 pany, supplier retail service provider or aggregator.

1 SECTION 11 Said Section 1F of said Chapter 164 is hereby
2 further amended by striking in paragraph (8)(f) the first sentence
3 and inserting in place thereof the following:

4 The department shall track instances in which a generation
5 company, supplier retail service provider, or aggregator switched a
6 customer's electric service without the customer's prior authoriza-
7 tion.